



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 26, 1990

Honorable H. Tati Santiesteban
Chairman
Senate Committee on Natural Resources
State Capitol, Room G-38C
Austin, Texas 78711

LO-90-20

Dear Senator Santiestaban:

You refer to Attorney General Opinion JM-1024 (1989), issued February 28, 1989, which concluded that a county commissioners court had no authority under subchapter B of chapter 52 of the Water Code to create an underground water conservation district. You ask:

Does the passage of amendments to Subchapter B, Chapter 52, and specifically Section 52.022, Water Code, made by Chapter 936, Acts of the 71st Legislature, Regular Session, 1989, which took effect September 1, 1989, and give the Texas Water Commission exclusive authority to create underground water conservation districts under that subchapter, create an inference that before the effective date of those amendments a county commissioners' court had authority to create such a district?

Attorney General Opinion JM-1024 noted that prior to 1973, chapter 52 of the Water Code, read together with chapter 51 (governing creation of water control and improvement districts and made applicable under section 52.022 to creation of underground water conservation districts), authorized creation of an underground water conservation district in a single county by the commissioners court and in two or more counties by the Texas Water Commission or its predecessor agencies. As the opinion stated, however, in 1973 chapter 52 of the Water Code was amended "to delete all references to the commissioners court's jurisdiction over the creation of underground water conservation districts." Attorney General

Opinion JM-1024 at 4 (citing Acts 1973, 63d Leg., ch. 598, §§ 1-5, at 1641).

The opinion also noted:

The bill analysis to the 1973 act (H.B. 935) states that the act '[g]ives the Water Rights Commission exclusive authority to create a district' and '[r]emoves from the local commissions [sic] court the authority to grant or refuse a petition for creation of a district.'

Id. at 5.

The 1989 amendment to chapter 52 to which you refer, Senate Bill 1212, rewrote section 52.022 to read:

(a) An underground water conservation district may be created under and subject to the authority, conditions, and restrictions of Article XVI, Section 59, of the Texas Constitution.

(b) The commission has exclusive jurisdiction over the delineation of management areas and the creation of districts under this subchapter.

Acts 1989, 71st Leg., ch. 936 § 2 at 3982.

The bill analysis to Senate Bill 1212 states as "background" for that act, that

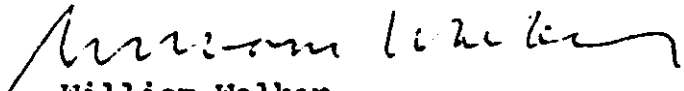
existing procedures for creating groundwater conservation districts by petition to the Texas Water Commission are somewhat vague and difficult to apply.

Bill Analysis, S.B. 1212, 71st Leg. (1989). The act, the bill analysis states, "eliminates Chapter 52 dependence on Chapter 51" and otherwise amends chapter 52 to streamline and simplify procedures for the creation of underground water conservation districts.

We find nothing in Senate Bill 1212 or in its bill analysis indicating that the effect of that act was to deprive commissioners courts of authority over the creation of underground water conservation districts. In response to

your question, we do not think that the passage of Senate Bill 1212 creates an inference that before the effective date of that act commissioners courts had authority to create underground water conservation districts. We reaffirm the conclusion of Attorney General Opinion JM-1024 that commissioners courts have had no such authority since 1973.

Very truly yours,



William Walker
Assistant Attorney General
Opinion Committee

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